

AN ACT

ENTITLED, An Act to revise the bank franchise tax apportionment of income provisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 10-43-23.1 be amended to read as follows:

10-43-23.1. The property factor used in § 10-43-22.1 is a fraction, the numerator of which is the average value of the financial institution's real and tangible property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the financial institution's real and tangible personal property owned or rented and used everywhere during the tax period.

Section 2. That § 10-43-24.1 be amended to read as follows:

10-43-24.1. The payroll factor used in § 10-43-22.1 is a fraction, the numerator of which is the total amount paid in this state during the tax period by the financial institution for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

Section 3. That § 10-43-24.2 be amended to read as follows:

10-43-24.2. Compensation is paid in this state if:

- (1) The individual's service is performed entirely within this state;
- (2) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
- (3) Some of the individual's service is performed in the state and:
 - (a) The base of operations, or if there is no base of operations, the place from which the individual's service is directed or controlled, is in this state; or
 - (b) The base of operations or place from which the individual's service is directed or controlled is not in any state in which some part of the individual's service is performed, but the individual's residence is in this state.

Section 4. That § 10-43-24.3 be repealed.

Section 5. That § 10-43-25.1 be amended to read as follows:

10-43-25.1. The receipts factor used in § 10-43-22.1 is a fraction, the numerator of which is the total receipts of the financial institution in the state during the tax period, and the denominator of which is the total receipts of the financial institution everywhere during the tax period.

Section 6. That § 10-43-25.2 be amended to read as follows:

10-43-25.2. Interest, fees and penalties in the nature of interest, discount, and net gain from loans, including federal funds sold and acceptances, and other installment obligations shall be included in the numerator specified in § 10-43-25.1 as follows:

- (1) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subdivision are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, the receipts described in this subdivision shall be included in the numerator of the receipts factor if the borrower's billing address is located in this state;
- (2) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower's billing address is located in this state;
- (3) The numerator of the receipts factor includes net gains (but not less than zero) from the sale of loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subdivision (1) of this section and the denominator of which is the total amount of interest and fees or

penalties in the nature of interest from loans secured by real property;

- (4) The numerator of the receipts factor includes net gains (but not less than zero) from the sale of loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subdivision (2) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property;
- (5) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state; and
- (6) The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to subdivision (5) of this section and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

Section 7. That § 10-43-25.3 be amended to read as follows:

10-43-25.3. Fees, other than those described in § 10-43-25.2, commissions, service charges, and other receipts from the rendering of financial or fiduciary services shall be included in the numerator specified in § 10-43-25.1 if the service is principally performed in South Dakota unless the fees, commissions, service charges, and other receipts are affiliated service income as provided in § 10-43-25.8.

Section 8. That § 10-43-25.4 be amended to read as follows:

10-43-25.4. Receipts from the rental of real or tangible personal property shall be included in the numerator specified in § 10-43-25.1 if the property is principally located in South Dakota.

Section 9. That § 10-43-25.5 be amended to read as follows:

10-43-25.5. Interest, dividends, and net gains from transactions in securities, including stocks, bonds, and all other money markets instruments, shall be included in the numerator specified in § 10-43-25.1 if the financial institution's principal place of business is in South Dakota.

Section 10. That § 10-43-25.6 be amended to read as follows:

10-43-25.6. Notwithstanding the provisions of § 10-43-25.5, receipts from securities used to maintain reserves against deposits to meet federal and state reserve requirements shall be included in the numerator specified in § 10-43-25.1 based on the ratio that the deposits in South Dakota bear to total deposits everywhere during the tax period.

Section 11. That § 10-43-25.7 be amended to read as follows:

10-43-25.7. Receipts from securities owned by a financial institution but held or pledged to secure public or trust funds shall be included in the numerator specified in § 10-43-25.1 if the financial institution's office where the deposits are maintained is in South Dakota.

Section 12. That § 10-43-25.8 be amended to read as follows:

10-43-25.8. Affiliated service income shall be included in the numerator specified in § 10-43-25.1 only if the income relates to:

- (1) Loans secured primarily by real property or tangible personal property located in this state;
- (2) Loans made to customers located in this state, which are not secured by real property or tangible personal property; or
- (3) Credit card receivables from customers in this state.

Section 13. That § 10-43-25.9 be amended to read as follows:

10-43-25.9. For the purposes of §§ 10-43-25.3 and 10-43-25.8, affiliated service income means fees, commissions, service charges, and other receipts from the production or servicing of loans or credit card receivables by a nondepository financial institution for another nondepository financial

institution, if each nondepository financial institution is in the same affiliated group for purposes of filing a consolidated federal corporate income tax return.

Section 14. That ARSD 64:26:02:08 be repealed.

Section 15. That ARSD 64:26:02:09 be repealed.

Section 16. That ARSD 64:26:02:10 be repealed.

Section 17. The effective date of this Act is January 1, 2015.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1201

Chief Clerk
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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1201

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State